

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

REPLY COMMENTS OF THE GREENLINING INSTITUTE , CENTER FOR MEDIA JUSTICE, MEDIA ACTION GRASSROOTS NETWORK (MAG-NET), CENTER FOR ACCESSIBLE TECHNOLOGY, MEDIA ALLIANCE, THE UTILITY REFORM NETWORK, 18MILLIONRISING.ORG, ALLIANCE FOR COMMUNITY MEDIA, ALTERNATE ROOTS, APPALSHOP, INC., BLACK ALLIANCE FOR JUST IMMIGRATION (BAJI), CENTER FOR SOCIAL INCLUSION, COLOROFCHANGE.ORG, GENERATION JUSTICE, GLOBAL ACTION PROJECT, HOPE COMMUNITY/ SPEAC, INSTITUTE FOR LOCAL SELF-RELIANCE, LINE BREAK MEDIA, MARTINEZ STREET WOMEN'S CENTER, MAY FIRST/ PEOPLE LINK, MEDIA MOBILIZING PROJECT, MILLION HOODIES MOVEMENT FOR JUSTICE, MINNESOTA CENTER FOR NEIGHBORHOOD ORGANIZING, MUSLIM AMERICAN WOMEN'S POLICY FORUM, OPEN ACCESS CONNECTIONS, PRESENTE.ORG, PROMETHEUS RADIO PROJECT, QUOTE...UNQUOTE, INC., SOMOS UN PUEBLO UNIDO, SOUTHWEST ORGANIZING PROJECT, SOUTHWEST WORKERS UNION, ST. PAUL NEIGHBORHOOD NETWORK, THE PEOPLE'S PRESS PROJECT, THE YOUNG PEOPLE'S PROJECT, UCIMC, VOICES FOR RACIAL JUSTICE, AND WORKING NARRATIVES ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING, ORDER ON RECONSIDERATION, SECOND REPORT AND ORDER, AND MEMORANDUM OPINION AND ORDER

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I. INTRODUCTION

In accordance with the Commission's Second Further Notice of Proposed Rulemaking of June 22, 2015 and Order of August 5, 2015, The Greenlining Institute (Greenlining), Media Action Grassroots Network (MAG-Net), Center for Media Justice, Center for Accessible Technology, Media Alliance, The Utility Reform Network, 18MillionRising.org, Alliance For Community Media, Alternate ROOTS, Appalshop, Inc., Black Alliance for Just Immigration (BAJI), Center for Social Inclusion, ColorOfChange.org, Generation Justice, Global Action Project, Hope Community/ SPEAC, Institute for Local Self-Reliance, Line Break Media, Martinez Street Women's Center, May First/ People Link, Media Mobilizing Project, Million Hoodies Movement for Justice, Minnesota Center for Neighborhood Organizing, Muslim American Women's Policy Forum, Open Access Connections, Presente.org, Prometheus Radio Project, Quote...Unquote, Inc., Somos Un Pueblo Unido, SouthWest Organizing Project, Southwest Workers Union, St. Paul Neighborhood Network, The People's Press Project, The Young People's Project, UCIMC, Voices for Racial Justice, and Working Narratives (collectively, Joint Commenters), file these Reply Comments.

The Commission should disregard providers' arguments that there should be no minimum service levels for Lifeline for broadband. A market-based definition of Lifeline for broadband would not guarantee the availability of Lifeline and would create a serious risk of provider waste, fraud, and abuse. Additionally, the Commission's creating minimum standards for Lifeline for broadband would not materially affect participation by providers. Similarly, under some circumstances, a market-based definition of Lifeline for broadband could actually reduce choice for consumers. Finally, Joint Commenters join other parties in objecting to the

Commission's proposed restriction of enhanced tribal Lifeline to tribal areas with low population densities.

II. THE COMMISSION SHOULD DISREGARD PROVIDERS' SELF-SERVING ARGUMENTS THAT WOULD ELIMINATE MINIMUM SERVICE LEVELS FOR LIFELINE FOR BROADBAND.

The NPRM asks how the Commission can establish minimum service levels for Lifeline for broadband service.¹ The carriers' almost universal response is that the Commission should not.² Most of the providers argue that they should be able to receive a broadband Lifeline subsidy for any of their service plans,³ or for those plans that the provider deigns to offer as a Lifeline service.⁴ These arguments in favor of a "market-based" definition of Lifeline are based on nebulous concerns about the Commission's "micro-managing" service offerings,⁵ vague assertions about promoting consumer choice⁶, and claims that providers will not participate in a program with minimum standards.⁷

If the Commission adopted the provider-suggested "market-based" definition of Lifeline, it would transform Lifeline from a package of robust specific service elements to a subsidy "voucher" that would be applicable to any of those carriers' service offerings. The Commission should reject this "market-based" definition of Lifeline, because such a definition does not

¹ NPRM at ¶ 35.

² ACA Opening Comments at pp. 4-5; AT&T Opening Comments at 8; Cox Opening Comments at 3; Frontier Opening Comments at 9; Joint Commenters Opening Comments at 18.

³ ACA Opening Comments at 4-5; AT&T Opening Comments at 8; Comcast Opening Comments at 13; Cox Opening Comments at 3, note 3; Frontier Opening Comments at 9-10. (Provider) Joint Commenters Opening Comments at 18.

⁴ Comcast Opening Comments at 13.

⁵ Verizon Opening Comments at 6.

⁶ AT&T Opening Comments at 8; Comcast Opening Comments at 12; Cox Opening Comments at 3; Frontier Opening Comments at 9-10.

⁷ ACA Opening Comments at 4; AT&T Opening Comments at 9; Cox Opening Comments at 3; Frontier Opening Comments at 10.

guarantee the availability of affordable Lifeline services and creates a serious risk of provider waste, fraud and abuse. Additionally, contrary to providers' assertions, creating minimum standards for Lifeline for Broadband will not materially reduce provider participation. In some instances, the lack of minimum standards could actually result in reduced choice for consumers.

A. A Market-Based Definition Of Lifeline Does Not Guarantee The Availability of Affordable Lifeline Services.

Many providers propose a “market-based” definition of Lifeline for broadband, arguing that allowing Lifeline subscribers to apply a Lifeline subsidy to any service offering, no matter how pitiful, will enhance consumer choice.⁸ However, apart from vague statements about the “highly competitive market,”⁹ the carriers do not explain how this practice would guarantee that carriers will offer affordable Lifeline plans. The “market” for a low-income communications product cannot be considered competitive enough to guarantee affordable Lifeline service because the government sponsored Lifeline program provides a subsidy to keep the rates low **precisely because** carriers' current offerings are not affordable. Market forces alone have failed to create affordable phone service for low-income consumers and have failed to achieve the Legislature's universal service goals. Certain prepaid carriers may point to the popularity of their Lifeline service offerings as evidence of market demand that carriers have tried to meet. However, those services were not initially developed based on market demand but rather based on interest in government subsidies.¹⁰ Those services have flourished in part because of the artificially low rate made possible by government intervention.

⁸ Note 6, *supra*.

⁹ AT&T Opening Comments at 9; *see also*, Cox Opening Comments at 8-9; (Provider) Joint Commenters at 4.

¹⁰ An example of this cognitive dissonance of carriers attempting to rely on “market demand” for a subsidy program is Verizon's comments on a 2010 affordability study introduced by staff of the California Public Utilities

Similarly, providing even a moderate discount off of a high priced broadband service does not necessarily make that service affordable. Not only should this Commission ensure that Lifeline customers are receiving an affordable and high quality service, but it should ensure that other ratepayers are receiving value for their surcharge dollars. The Lifeline discount will not guarantee that low-income customers will increase their connectivity, and thereby enhance the overall value of the network, if these Lifeline customers can choose an expensive, feature-laden service that offers sub-par service and may be disconnected for nonpayment within a few months or force the consumer to cut back on other vital necessities. Accordingly, in order to protect low-income consumers and ensure the affordability of broadband service, the Commission should impose minimum standards for Lifeline for broadband.

B. A Market Based Definition of Lifeline Service Creates the Potential of Waste, Fraud and Abuse by Carriers.

Creating a market based definition of Lifeline service would also create the potential for waste, fraud and abuse on the part of carriers, who will no doubt be motivated by their existing interest in enrolling customers into the most lucrative, and most expensive, plans. Some

Commission. Although this study was later dismissed as outdated evidence by the California Commission, at the time Verizon argued that low-income LifeLine customers can “tolerate” a price increase of ten to fifteen dollars a month for telecommunications subsidies. Cal. Pub. Util. Comm’n, Order Instituting Rulemaking Regarding Revisions To the California Universal Telephone Service (Lifeline) Program, R.11-03-013, *Verizon CA Inc.’s Opening Comments* at 2, May 28, 2013. However, rather than arguing that this price tolerance rendered the current \$11.00 subsidy (and capped LifeLine Rate of \$6.84) unnecessary, Verizon argued that the Commission should lift the cap and allow an increase in the LifeLine rate. *Id.* Verizon’s arguments were not based on legitimate beliefs about the competitive state of the market or the insufficiency of the state provided subsidy. Rather, they were apparently an argument in favor of regulatory arbitrage. Verizon’s comments clearly indicated that, given the opportunity with the cap lifted, Verizon would immediately raise its rates for Lifeline service via a so-called “tolerable” increase. Based on Verizon’s discussion, current market forces are insufficient to create downward pricing pressure on Lifeline services, and Lifeline for broadband will face similar problems unless the Commission takes steps to avoid such an outcome

providers incorrectly state that carriers are “necessarily consumer-driven.”¹¹ Carriers are profit-driven, and have incentives to sign up customers for their most lucrative (and typically most expensive) plans. If a carrier is aware that Lifeline funds will compensate the carrier for a customer’s non-recurring charges, monthly bill, surcharges and other administrative costs, those incentives increase.

The Commission should note that when carriers discuss the “competitive market,” they refer to the market for telephone services generally, not the market for Lifeline services. These carriers state that a “subsidy only” Lifeline policy will be effective because carriers will be responsive to the needs of their customers.¹² However, this argument fails to consider the fact that Lifeline customers have unique characteristics that differentiate them from the much larger group of non-Lifeline customers.¹³ Assuming, for the sake of argument, that major carriers are actually responsive to the needs of their customers as a whole, the difference between these customer classes means that a carrier’s response to market forces in no way guarantees acceptable service for the sub-group of Lifeline customers.

Joint Consumers respectfully suggest that an emphasis on consumer protections and disclosures and regulations,¹⁴ rather than the creation of robust minimum standards, would not be enough in this day of decreased enforcement budgets, outsourcing of marketing and sales efforts, general ineffectiveness of relying on disclosures in lieu of actual regulation, and the ever-present risk of legislative capture. As a result, carriers may encourage Lifeline customers to choose

¹¹ (Provider) Joint Commenters Opening Comments at 18.

¹² Note 6, *supra*.

¹³ Opening Comments of Greenlining, MAG-Net, et al., at pp. 3-7.

¹⁴ *See* (Provider) Joint Commenters Opening Comments at 17.

plans which they cannot afford. In the event that the Lifeline customer must disconnect service, the *carrier* will be made whole by the Lifeline program, but the customer will be without service and will have to pay additional fees to eventually re-connect telephone service. Joint Consumers urge the Commission to protect Lifeline customers from carriers' predatory, profit-seeking behavior by creating clearly defined minimum standards Lifeline service.

C. Reasonable Minimum Standards for Broadband Lifeline Will Not Act As a Disincentive to Provider Participation.

As noted above, many providers argue that imposing minimum standards for Lifeline for Broadband will discourage providers from participating in the program.¹⁵ This is not the first time that Joint Commenters have heard these arguments. During the CPUC's LifeLine reform proceeding, many providers made the same arguments regarding wireless LifeLine.¹⁶ However, based on statements made at various CPUC workshops, it became clear that the providers making that claim—primarily AT&T¹⁷ and Verizon—had no intention of offering wireless LifeLine.¹⁸ The CPUC ultimately imposed minimum standards for wireless LifeLine. The CPUC's extension of the LifeLine program resulted in an explosive expansion of the number of

¹⁵ Note 7, *supra*.

¹⁶ Cal. Pub. Util. Comm'n, Order Instituting Rulemaking Regarding Revisions To the California Universal Telephone Service (Lifeline) Program, R.11-03-013, *Comments of AT&T California (U 1001 C) and Affiliated Entities to Assigned Commissioner Ruling and Scoping Memo* at 19-20, May 28, 2013.

¹⁷ It should be noted that AT&T did offer wireless Lifeline through its Cricket brand for an 18-month period. However, AT&T did so only as a condition of the Commission's approval of the AT&T/Leap merger and AT&T discontinued the Cricket LifeLine service as soon as it was allowed. Cal. Pub. Util. Comm'n, *Approval of Cricket Communications, LLC's (U-3076-C) Request for Relinquishment of its Eligible Telecommunications Carrier Designation in California, Effective September 15, 2015*, Resolution T-17476 (May 21, 2015).

¹⁸ In workshops in subsequent proceedings, AT&T has stridently asserted its right to argue that minimum standards are a disincentive to provider participation, but has consistently refused to state that it would participate in LifeLine if there were no minimum standards.

wireless LifeLine providers and the number of program participants.¹⁹ The wireless Lifeline program has similarly been a success at the federal level.²⁰

Joint Commenters believe that providers' arguments that minimum standards for broadband would discourage participation are similarly disingenuous. Many of those providers would not, and will not, participate in a Lifeline for broadband program even if the Commission ultimately does not impose any minimum service requirements. Accordingly, the Commission should be skeptical of these arguments.

Finally, Joint Commenters note that the Commission could eliminate concerns about minimum standards discouraging provider participation by making provider participation mandatory. The Commission could use its reclassification of broadband services as telecommunications services to implement such a change.²¹ However, Joint Commenters suggest that the Commission need not take such a drastic step as long as provider participation in Lifeline for broadband is reasonably robust.

D. Providers' Self-Serving Attempts to Transform the Lifeline Support Amount into a Voucher Could Reduce Choice for LifeLine customers.

In some instances, a "subsidy only" plan could reduce choice for Lifeline customers. For example, AT&T suggests that if the Commission does impose minimum standards, then providers should be allowed to pick and choose which of their offerings are available as a Lifeline offering.²² AT&T's and Verizon's intentions to "kill the copper" network have been

¹⁹ CA Third Party Administrator LifeLine Customer Counts, available at <http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/> (last accessed August 31, 2015).

²⁰ CTIA Opening Comments at pp. 4-5.

²¹ Report and Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 (March 12, 2015).

²² AT&T Opening Comments at p. 10.

pointed out so many times that it hardly bears repeating.²³ By giving carriers the unfettered discretion to determine what is or is not a Lifeline plan, carriers could initially price wireless Lifeline much more cheaply than wireline Lifeline, or price their wireline Lifeline offerings at unaffordable levels. As a result, carriers could forcibly migrate Lifeline customers predominantly or exclusively to wireless or IP offerings, creating a false justification for then eliminating their copper networks. Accordingly, wireline service could become unavailable or unaffordable, resulting in reduced consumer choice. Joint Commenters urge the Commission to create a defined set of Lifeline service offerings in order to preserve availability and affordability of those services.

III. THE COMMISSION SHOULD NOT RESTRICT ENHANCED TRIBAL LIFELINE TO AREAS WITH LOW POPULATION DENSITIES.

Joint Commenters have had the opportunity to review the reply comments of the Low-Income Consumer Groups and Rural Broadband Policy Group, and join those groups' opposition to the Commission's proposal to restrict the availability of the enhanced to sparsely populated tribal lands. Joint Commenters urge Commission to continue to allow the enhanced Lifeline subsidy to apply to all residents of tribal lands. Additionally, the Commission should continue to work address concerns regarding the geographic scope of the enhanced Tribal Lifeline and Link Up programs.

IV. CONCLUSION

Opening comments in this proceeding reveal two very different perspectives on the Lifeline program. Many parties view the Commission's review of the Lifeline program as an

²³ Karl Bode, *Verizon is Willfully Driving DSL Users Into the Arms of Cable*, available at <http://www.dslreports.com/shownews/Verizon-is-Willfully-Driving-DSL-Users-Into-the-Arms-of-Cable-120473>.

opportunity to provide broadband service, and the benefits of that service, to those consumers that the market has failed. Accomplishing this goal requires defined minimum standards and Commission oversight of rates and subsidies.

Other parties, primarily providers, view the Commission's review as an opportunity to engage in government-sanctioned profit-seeking and anticompetitive behavior. These parties (primarily the largest providers) couch their arguments in terms of market forces and consumer choice. However, their goal appears to be a system in which the Commission either cannot or does not impose minimum for Lifeline service, but heavily subsidizes any provider service and non-recurring charges, permitting providers to enroll Lifeline customers in high-cost (and high-profit) plans. A provider could then extract as much profit as possible from the Lifeline customer from both telephone service and "bundled" services, until that customer is unable to pay. When a Lifeline customer is eventually unable to pay for, the Lifeline fund will reimburse the provider for any "bad debt," making the provider whole. The provider will have extracted the highest possible rent from the customer, leaving the Lifeline customer without telephone service and a damaged credit rating.

The Commission must not allow providers to "pull the plug" on low-income consumers. In order to protect those consumers and promote a robust, successful Lifeline for broadband program, the Commission should reject providers' proposals, which would only line those providers' pockets at the expense of ratepayers. Joint Commenters respectfully request that the Commission adopt Joint Commenters' suggested revisions to the Lifeline program.

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Respectfully submitted,

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